

broadband PCS license would have to provide service to one-fourth of the population in its partitioned area or make a showing of substantial service at the five-year benchmark.

39. Under the second option, we proposed more modest build-out requirements for a partitioned area where the original licensee has already met its five-year construction requirements and certifies in the partitioning application that it will meet the ten-year construction requirements for its entire license area.¹³⁰ Because the original licensee would maintain its original coverage commitment with respect to the entire licensing area under this option, we tentatively concluded that the partitionee should be subject to a relaxed build-out requirement.¹³¹ In those cases, we proposed that the partitionee be required only to satisfy the substantial service requirement for renewal expectancy by the end of the ten-year license term.¹³²

40. Comments. Several commenters support the Commission's proposal to offer two construction options.¹³³ AT&T Wireless contends that the Commission should adopt only the second option.¹³⁴ Carolina Independents argue that imposing construction requirements on the partitioned licenses would impose greater obligations in partitioned areas than in non-partitioned areas.¹³⁵ Carolina Independents argues that while initial licensees only have to serve a large, populous city in order to meet the construction requirements, partitioned licensees must meet construction requirements in less populous areas, potentially with more difficult terrain, thus making compliance with the Commission's time frames impractical.¹³⁶

41. BellSouth and Western Wireless support the construction build-out proposal in the *Notice* with certain modifications.¹³⁷ BellSouth suggests that the partitionees should have a choice between either option one or a modified version of option two whereby the parties mutually agree that they will meet the five-year and ten-year construction requirements, and the partitionee is only required to meet a more flexible ten-year construction requirement based upon population rather than substantial service.¹³⁸ Western Wireless suggests a single construction option whereby

¹³⁰ *Id.* at ¶ 34.

¹³¹ *Id.*

¹³² *Id.*

¹³³ See, e.g., Carolina Independents Comments at 3; CTIA Comments at 10; GTE Comments at 4-5; PCS Wisconsin Comments at 4.

¹³⁴ AT&T Wireless Comments at 5.

¹³⁵ Carolina Independents Reply Comments at 3.

¹³⁶ *Id.*

¹³⁷ BellSouth Comments at 10-11; Western Wireless Comments at 6-7.

¹³⁸ BellSouth Comments at 10-11.

a partitionee would be obligated to satisfy the same construction requirements as the original licensee but would be eligible for an automatic extension of time equal to the time that had lapsed between the dates of the original license grant and the date of the partitioning transfer.¹³⁹

42. Discussion. Given the support of several commenters, we will adopt the two alternative construction options set forth in our *Notice*, with some modification.¹⁴⁰ Under the first option, the partitionee certifies that it will satisfy the same construction requirements as the original licensee.¹⁴¹ The partitionee then must meet the same five- and ten-year service requirements as the original 10 MHz or 30 MHz licensee in its partitioned area, while the partitioner remains responsible for meeting those requirements in the area it has retained. Under the second option, the partitioner certifies that it has already met or will meet its five-year construction requirement and that it will meet the ten-year construction requirement for the entire market. Because the partitioner retains the responsibility for meeting the construction requirements for the entire market, the partitionee will only be required to meet the substantial service requirement for its partitioned area at the end of the ten-year license term. The definition of substantial service will be that definition found at Section 24.16(a) of the rules. If a partitionee fails to meet its construction requirements, the license for the partitioned area will automatically cancel without further Commission action.

43. These construction requirements are sufficiently flexible to increase the viability and value of partitioned licenses and will facilitate partitioning, while continuing to prevent circumvention of our construction requirements. Licensees will have economic incentives to construct their systems rapidly and introduce service in their market areas because they have purchased their partitioned license areas. At the five-year benchmark, partitionees are required to file supporting documentation showing compliance with the construction requirements.¹⁴² Licensees failing to meet the coverage requirements will be subject to forfeiture, license cancellation, or other penalties.¹⁴³

B. Disaggregation

1. Timing of Disaggregation

44. Proposal. Under our existing rules, broadband PCS licensees are not permitted to disaggregate spectrum until after January 1, 2000, and only after the licensee has met its five-year

¹³⁹ Western Wireless Comments at 6-7.

¹⁴⁰ See, e.g., Carolina Independents Comments at 3; CTIA Comments at 10; GTE Comments at 4-5; PCS Wisconsin Comments at 4.

¹⁴¹ See GTE Comments at 5.

¹⁴² See *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 5019, ¶ 156.

¹⁴³ *Id.*

construction requirement.¹⁴⁴ The Commission had previously concluded that allowing immediate disaggregation may impede competition in the provision of broadband PCS.¹⁴⁵ In the *Notice*, we sought comment as to whether these restrictions are still necessary. We tentatively concluded that such restrictions may no longer be warranted.¹⁴⁶ We found that disaggregation may actually lead to increased competition because it will enable additional entities to provide broadband PCS service within geographic market areas.¹⁴⁷ As such, we tentatively concluded that our prohibitions on disaggregation may constitute a barrier to entry for small businesses and we proposed to eliminate them.

45. Comments. Commenters support the proposals in the *Notice* to allow immediate disaggregation and eliminate the requirement that a licensee have met its five-year construction requirement prior to disaggregating.¹⁴⁸ PCIA contends that the current time limitations are no longer necessary and allowing earlier disaggregation will invigorate rather than impede competition.¹⁴⁹ PCIA also contends that these actions will remove market barriers to achieve the objective of Section 257 of the Communications Act.¹⁵⁰

46. Discussion. We conclude that disaggregation of broadband PCS spectrum should be allowed prior to January 1, 2000, and that the condition that the licensee must first satisfy the five-year build out requirement before disaggregating should be eliminated. To the extent that disaggregation would enable other entities to provide broadband PCS within geographic market areas, we find that allowing immediate disaggregation would encourage rather than impede competition by enabling the entry of new competitors. Moreover, our current prohibition on disaggregation may constitute a barrier to entry for small businesses that lacked the resources to participate successfully at auction for 30 MHz and 10 MHz spectrum blocks. In furtherance of the mandate prescribed by Section 257 of the Communications Act, we are eliminating such market entry barriers by permitting non-entrepreneur block (A, B, D, and E block) PCS licensees to disaggregate spectrum at any time to other entities with minimum eligibility qualifications. Entrepreneur block (C and F block) licensees may disaggregate at any time to other entrepreneurs, or to non-entrepreneurs after a five-year holding period. Eliminating the current disaggregation restrictions will further the goals of reducing market entry barriers, ensuring efficient use of spectrum, expediting access to broadband PCS service, and encouraging

¹⁴⁴ 47 C.F.R. § 24.229(c).

¹⁴⁵ *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 4985, ¶ 69.

¹⁴⁶ *Notice* at ¶ 37.

¹⁴⁷ *Id.*

¹⁴⁸ GTE Comments at 5-6; PCS Wisconsin Comments at 5; PCIA Comments at 4-5; Western Wireless Comments at 7; Americall Reply Comments at 2.

¹⁴⁹ PCIA Comments at 5.

¹⁵⁰ *Id.*

competition. While we conclude that disaggregation should generally be allowed, we emphasize that all proposed disaggregation agreements, like partitioning agreements, will be subject to Commission review and approval under the public interest standard of Section 310 of the Act. In addition, as discussed below, disaggregators will be subject to the CMRS spectrum cap to ensure that disaggregation is not used to accumulate large amounts of spectrum in order to preclude entry by other competitors.

2. Amount of Spectrum to Disaggregate

47. Proposal. In the *Notice*, we sought comment on the minimum amount of spectrum that a licensee may disaggregate.¹⁵¹ We proposed that licensees disaggregate frequencies in accordance with the pairings specified in our rules.¹⁵² We tentatively concluded that some grouping of frequency pairs is preferable for administrative purposes, otherwise the database necessary to track authorizations could become too cumbersome and complex and processing could be delayed or prone to error.¹⁵³ Therefore, we tentatively concluded that we should not permit disaggregation for broadband PCS in blocks smaller than a 1 MHz block of paired frequencies (500 kHz on each frequency group), thus requiring the disaggregating licensee to retain a minimum of 1 MHz.¹⁵⁴

48. Comments. Some of the commenters agree with the proposal in the *Notice* that disaggregation should be in amounts of at least a 1 MHz block of paired frequencies.¹⁵⁵ However, other commenters contend that disaggregation of smaller amounts of spectrum should be permitted.¹⁵⁶ ITA and Motorola favor disaggregation in increments of 100 kHz each of paired spectrum (100 kHz plus 100 kHz for a total of 200 kHz).¹⁵⁷ Motorola contends that the 1 MHz floor will unfairly advantage certain technologies over others and that the 100 kHz plus 100 kHz standard provides channels for nearly any transmission technology available.¹⁵⁸ AirGate contends that disaggregation of less than 5 MHz should not be permitted because most services require at

¹⁵¹ *Notice* at ¶ 41.

¹⁵² *Notice* at ¶ 42. See 47 C.F.R. § 24.229(a), (b).

¹⁵³ *Notice* at ¶ 42.

¹⁵⁴ *Id.*

¹⁵⁵ AT&T Wireless Comments at 4; GTE Comments at 6-7; UTC Comments at 3; Americall Reply Comments at 2.

¹⁵⁶ ITA Reply Comments at 1; Motorola Comments at 2; Omnipoint Comments at 10; GTE Comments at 7.

¹⁵⁷ ITA Reply Comments at 1; Motorola Comments at 2-4.

¹⁵⁸ Motorola Comments at 3.

least 10 MHz to carry voice traffic.¹⁵⁹ PCS Wisconsin, Sprint, Omnipoint, and SR Telecom argue that there should be no limit on the amount of spectrum that can be disaggregated.¹⁶⁰

49. Discussion. We agree with the commenters that argue that there should be no restriction on the amount of broadband PCS spectrum that can be disaggregated. Providing the flexibility to allow parties to decide the exact amount of spectrum to be disaggregated is preferable because it will encourage more efficient use of spectrum and will permit the deployment of a broader mix of service offerings, leading to a more competitive wireless marketplace. We find that requiring parties to obtain disaggregated spectrum in a predetermined amount, such as a block of 1 MHz, may result in parties obtaining more spectrum they need, leaving some spectrum unused, and may foreclose some parties from using disaggregation as a means of obtaining the spectrum they need to provide their service offerings. We agree with Sprint that market forces and available technology, rather than regulation, should determine how much spectrum is disaggregated.¹⁶¹ Therefore, we will not restrict the amount of broadband PCS spectrum that can be disaggregated. Similarly, we will not require the disaggregator to retain a minimum amount of spectrum. While our broadband PCS rules do not contain specific channelization requirements, the rules do require compliance with emission limitations in the frequency bands immediately outside and adjacent to each of the broadband PCS frequency blocks.¹⁶² Therefore, while we will allow disaggregating parties to negotiate channelization plans among themselves as part of their disaggregation agreements, we will continue to require that such plans provide the necessary out-of-band emission protections to third party licensees as required by our rules.

50. We are not adopting a limit on the maximum amount of spectrum that licensees may disaggregate, provided that the disaggregatee complies with the CMRS spectrum cap.¹⁶³ We find no evidence at this time that a maximum limitation for disaggregation is necessary. PCS licensees shall be permitted to disaggregate spectrum without limitation on the overall size of the disaggregation as long as such disaggregation is otherwise consistent with our rules.

¹⁵⁹ AirGate Comments at 6-7.

¹⁶⁰ PCS Wisconsin Comments at 5; Sprint Comments at 5; SR Telecom Comments at 11; Omnipoint Comments at 10-11 (contending that the 1 MHz threshold will likely leave significant amounts of spectrum unused).

¹⁶¹ See Sprint Comments at 5.

¹⁶² See 47 C.F.R. §§ 24.229 and 24.238.

¹⁶³ See 47 C.F.R. § 20.6.

3. Matters Relating to Entrepreneur Block Licensees

51. Proposal. Issues similar to those raised in partitioning concerning entrepreneur block licensees also arise in the context of disaggregation.¹⁶⁴ As with partitioning, we tentatively concluded in the *Notice* that an entrepreneur block licensee should be allowed to disaggregate to other qualified parties at any time without restriction and to parties not eligible for entrepreneur block licenses after a five-year holding period.¹⁶⁵ In addition, we concluded that entrepreneur block licensees that disaggregate to non-entrepreneurs after the five-year holding period should be subject to the Commission's unjust enrichment provisions on a proportional basis.¹⁶⁶ In the *Notice*, we sought comment on how such unjust enrichment amounts should be calculated.¹⁶⁷

52. Comments. BellSouth argues that entrepreneurs should be able to disaggregate a portion of their spectrum to any entity eligible to hold a PCS license.¹⁶⁸ Omnipoint argues that limiting disaggregation in the entrepreneur blocks will prevent entrepreneur licensees from swapping spectrum with other non-entrepreneur licensees in the same geographic market.¹⁶⁹ Omnipoint further argues that the Commission should permit spectrum swaps for the same licensed area to permit PCS licensees to negotiate with other licensees in the market to avoid adjacent channel interference issues.¹⁷⁰ Omnipoint suggests that permitting spectrum swapping for the same licensed area will lead to more efficient management of licenses and quicker introduction of PCS services.¹⁷¹ Most commenters agree that the unjust enrichment obligations should be applied on a proportional basis based upon the amount of spectrum transferred.¹⁷²

53. Discussion. In keeping with the proposals we are adopting in this *Report and Order* for partitioning, we will permit entrepreneur block licensees to disaggregate at any time to other parties that qualify as entrepreneurs. Disaggregation to entities that do not qualify as entrepreneurs is not permitted for the first five years of a license term. We disagree with BellSouth that this five-year holding period constitutes a barrier to entry into the PCS market. Entrepreneur block licensees will not be completely foreclosed from disaggregating spectrum,

¹⁶⁴ See *supra* ¶¶ 30-39.

¹⁶⁵ *Id.* at ¶ 46.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ BellSouth Comments at 15.

¹⁶⁹ Omnipoint Comments at 11

¹⁷⁰ *Id.* at 12-13.

¹⁷¹ *Id.* at 12.

¹⁷² See, e.g., BellSouth Comments at 15; Cook Inlet Comments at 3; Western Wireless Comments at 8.

because they may disaggregate to other entrepreneurs without limitation and to non-entrepreneurs after the five-year holding period, subject to unjust enrichment obligations. Allowing unrestricted entrepreneur block disaggregation would be inconsistent with our five-year restriction on full license transfers to non-entrepreneurs which was designed to ensure that entrepreneurs do not take advantage of special entrepreneur block provisions by immediately seeking to transfer their licenses to non-entrepreneurs.¹⁷³ We believe the same rationale would apply to entrepreneur block disaggregation, as licensees who have benefitted from such provisions could immediately disaggregate spectrum to parties that would not qualify for such benefits.

54. We also decline to adopt Omnipoint's proposal to permit entrepreneur block licensees to swap equivalent blocks of entrepreneur spectrum with non-entrepreneurs within the same market area. The administrative burden of keeping track of such arrangements would far outweigh any benefit to the public.

55. We will follow the approach outlined for partitioning and apply unjust enrichment payments to entrepreneur block licensees that disaggregate to non-entrepreneurs after the five-year holding period and to entrepreneur block licensees that qualified for bidding credits and installment payments and that disaggregate to other entrepreneurs that would not have qualified for such benefits. All such unjust enrichment payments will be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum retained by the original licensee. With respect to disaggregation from an entrepreneur block licensee to another entrepreneur that would also qualify for installment payments, we will adopt an approach similar to the one we adopted for partitioning. We will apportion the payment obligations between the disaggregator and disaggregatee based upon the amount of spectrum disaggregated and require separate payment obligations, promissory notes and default liabilities for each party.¹⁷⁴

¹⁷³ See *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5588-89, ¶¶ 128-129; *D, E, and F Block Report and Order*, at ¶ 84.

¹⁷⁴ For example, if a C block licensee owes \$1,000,000 in interest and principal for its license and, after four years of payments, has paid \$400,000 of the obligation and is disaggregating 10 MHz of its 30 MHz of licensed spectrum (or 33 percent) to an entity that would not qualify for installment payments, then 33 percent of the remaining \$600,000 government obligation (\$200,000) must be paid by the disaggregatee to the U.S. Treasury. The licensee's installment payments to the U.S. Treasury would be reduced by that amount and it would receive a new promissory note reflecting the reduced amount due. The original interest rate, calculated at the time the initial license was issued to the licensee, would continue to be applied to the licensee's remaining installment payments. If the licensee disaggregated to an entity that would qualify for installment payments, we would apportion the remaining \$600,000 balance owed the U.S. Treasury between the licensee and disaggregatee. The licensee would be required to continue making installment payments on its 66 percent of the balance owed (\$400,000) and the disaggregatee would be required to make installment payments on its 33 percent of the balance owed (\$200,000). Each party would receive financing documents for its share of the remaining balance with an interest rate equal to the interest rate calculated at the time of the issuance of the initial license in the market.

4. Construction Requirements

56. Proposal. In the *Notice*, we considered two construction requirements for parties disaggregating spectrum.¹⁷⁵ Under the first option, the disaggregatee obtaining spectrum from a 30 MHz licensee (A, B, or C block licensee) would be required to meet the same construction requirements as the original licensee: provide service to at least one-third of the population in the license area within five years of the license term and two-thirds of the population in the license area by the end of the ten-year license term.¹⁷⁶ A disaggregatee that obtains spectrum from a 10 MHz licensee (D, E, or F block licensee) would have to provide adequate service to at least one-quarter of the population in the license area or make a showing of substantial service at the five-year benchmark.¹⁷⁷

57. Under the second option, we proposed that if the original licensee had already met its five-year construction requirement and certifies that it will meet the ten-year construction requirement, the disaggregatee would be required only to satisfy the five-year construction requirement for the disaggregated spectrum by the end of the ten-year license term.¹⁷⁸ If either the disaggregator or disaggregatee failed to meet its construction requirements, we proposed that that party's license would automatically cancel without further action by the Commission.¹⁷⁹

58. We tentatively concluded that this approach would prevent spectrum warehousing, expedite the introduction of broadband PCS service, and increase spectrum efficiency.¹⁸⁰ We also proposed that the parties certify that the time remaining before the ten-year construction benchmarks is sufficient for them to meet the pertinent construction benchmarks for their respective licenses.¹⁸¹ Finally, we sought comment on how to handle construction requirements for disaggregatees who already possess a PCS license in the same geographic service area, and whether to apply disaggregation construction requirements to other CMRS licensees who obtain disaggregated PCS spectrum.¹⁸²

¹⁷⁵ *Notice* at ¶¶ 54-56.

¹⁷⁶ *Id.* at ¶ 52.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at ¶ 53.

¹⁷⁹ *Notice* at ¶ 55.

¹⁸⁰ *Notice* at ¶¶ 52-53.

¹⁸¹ *Id.* at ¶ 54.

¹⁸² *Id.* at ¶ 56.

59. Comments. GTE supports the two construction options set forth in the *Notice*.¹⁸³ BellSouth and AT&T Wireless, on the other hand, argue that the Commission should remove the five-year build-out requirement for disaggregation.¹⁸⁴ AT&T Wireless contends that allowing flexibility in the coverage requirements would permit parties to pursue more risky competitive ventures and would result in the development of new technology and new services.¹⁸⁵ BellSouth suggests if the disaggregated spectrum is 10 MHz or less, the Commission should apply the same coverage rules that apply to licensees of 10 MHz BTAs without regard to whether the original license is for 30 MHz or 10 MHz of spectrum.¹⁸⁶ NextWave argues that the Commission should not base its construction requirements for disaggregated spectrum on whether the spectrum was originally licensed in 30 MHz or 10 MHz bandwidths but, rather, solely on bandwidth.¹⁸⁷ Under NextWave's proposal, a disaggregatee that obtained its spectrum from a 30 MHz licensee would be subject to the same construction requirements as a disaggregatee that obtained its spectrum from a 10 MHz licensee, with the exception of having to provide service to at least one-quarter of the population or to make a showing of substantial service within the five-year benchmark.¹⁸⁸

60. Sprint suggests that the Commission allow relaxed construction requirements for new licensees even if the original licensee had not met the five-year build-out requirement, so long as the original licensee certifies that it will meet the five-year build-out requirement.¹⁸⁹ Americall, in its Reply Comments, argues that disaggregated licensees should be freed from the construction obligations of the initial licensee.¹⁹⁰ Americall contends that the parties should be allowed to allocate construction obligations among themselves through private agreement.¹⁹¹

61. Discussion. We conclude that the proposed construction requirements for disaggregation set forth in the *Notice* would be inconsistent with the approach adopted in our partitioning rules, and that a more flexible approach is appropriate. The goal of our construction requirements in both the partitioning and disaggregation contexts is to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place. However, the construction requirements in our PCS rules treat

¹⁸³ GTE Comments at 8-9.

¹⁸⁴ BellSouth Comments at 12; AT&T Wireless Comments at 5.

¹⁸⁵ AT&T Wireless Comments at 6-7.

¹⁸⁶ BellSouth Comments at 12.

¹⁸⁷ NextWave Comments at 5-6.

¹⁸⁸ *Id.*

¹⁸⁹ Sprint Comments at 11.

¹⁹⁰ Americall Reply Comments at 3.

¹⁹¹ *Id.*

geographic coverage and spectrum use differently: while our rules require PCS licensees to provide coverage to a certain amount of the population of their license areas within a specified time period, there is no requirement governing the amount of spectrum that licensees must use to meet this requirement. Thus, a licensee who disaggregates a portion of its spectrum block to another party may still meet its preexisting construction requirement in full by the using the spectrum it has retained.

62. Because our rules do not dictate a minimum level of spectrum usage by the original PCS licensee, we believe it would be inconsistent to impose separate construction requirements on both disaggregator and disaggregatee for their respective spectrum portions. This could inadvertently discourage disaggregation by imposing a heavier regulatory burden on parties who choose to disaggregate than was required of the original licensee. At the same time, we wish to ensure that the parties do not use disaggregation to circumvent our underlying construction requirements. Therefore, we adopt a flexible approach analogous to our approach in the partitioning context: we retain the underlying five and ten-year construction requirements for the spectrum block as a whole, but allow either party to meet the requirements on its disaggregated portion. Thus, a PCS licensee who disaggregates a portion of its spectrum may elect to retain responsibility for meeting the five and ten-year coverage requirements, or it may negotiate a transfer of this obligation to the disaggregatee. In either case, the rules ensure that the spectrum will be developed to at least the same degree that was required prior to disaggregation.

63. To ensure compliance with our rules, we will require that parties seeking Commission approval of a disaggregation agreement include a certification as to which party will be responsible for meeting the applicable five and ten-year construction requirements. Parties may also propose to share the responsibility for meeting the construction requirements. As part of our public interest review under Section 310(d), we will review each transaction to ensure that the party designated as responsible for meeting the construction requirements is *bona fide* and has the ability to meet these requirements. The specific requirements to be met will depend on whether the spectrum being disaggregated was originally licensed as a 30 Mhz block or a 10 MHz block. In the event that the only one party agrees to take responsibility for meeting the construction requirement and later fails to do so, that party's license will be subject to forfeiture, but the other party's license will not be affected. Should both parties agree to share the responsibility for meeting the construction requirements and either party later fail to do so, both parties' licenses will be subject to forfeiture. We decline to adopt the proposal set forth by some commenters that disaggregatees that already hold a broadband PCS license or other CMRS license in the same geographic market as the disaggregated spectrum should not be subject to a separate construction requirement for the disaggregated spectrum. So that our CMRS rules remain consistent and competitively neutral, disaggregatees that already hold a broadband PCS license or other CMRS license in the same geographic market will be subject to the same coverage requirements as disaggregatees who do not hold other licenses for disaggregated spectrum.

C. RELATED MATTERS

1. Combination of Partitioning and Disaggregation

64. Proposal. We recognized in the *Notice* that parties may wish to use partitioning and disaggregation in combination.¹⁹² We tentatively concluded that we should permit such combinations and we sought comment on whether the partitioning rules should prevail whenever there is a conflict between the application of the partitioning and disaggregation rules.¹⁹³

65. Comments. Commenters agree that entities should be allowed to acquire both partitioned and disaggregated spectrum in the same markets.¹⁹⁴ PCS Wisconsin argues, for example, that a party should be able to acquire 10 MHz of spectrum from a 30 MHz PCS license covering only one county of the licensee's license area.¹⁹⁵

66. Discussion. To allow parties flexibility to design the types of agreements they desire, we will permit combined partitioning and disaggregation. For example, this will allow a party to obtain a license for a single county of an A block market with only 15 MHz of spectrum. By allowing such combined partitioning and disaggregation, we believe that the goals of providing competitive service offerings, encouraging new market entrants, and ensuring quality service to the public will be advanced. We further conclude that in the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail. For the purpose of applying our unjust enrichment requirements and/or for calculating obligations under installment payment plans, when a combined partitioning and disaggregation is proposed, we will use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations.

2. Licensing

67. Proposal. In the *Notice*, we proposed to follow existing partial assignment procedures for broadband PCS licenses when reviewing requests for partitioning, disaggregation, or a combination of both.¹⁹⁶ Under our proposal, (1) the original licensee would file an FCC Form 490 signed by both parties; (2) the assignee would file an FCC Form 430, unless a current FCC Form 430 was on file for this party, and an FCC Form 600 defining the market area being

¹⁹² *Notice* at ¶ 58.

¹⁹³ *Id.* at ¶ 59.

¹⁹⁴ *See, e.g.*, GTE Comments at 9; PCS Wisconsin Comments at 6; Sprint Comments at 12.

¹⁹⁵ PCS Wisconsin Comments at 6.

¹⁹⁶ *Notice* at ¶ 60.

partitioned or disaggregated; and (3) all forms would be filed together as one package under cover of the FCC Form 490.¹⁹⁷

68. Comments. GTE agrees that the current procedures and forms are sufficient to handle the filing requirements created by partitioning and disaggregation.¹⁹⁸

69. National Paging and Personal Communications Association (NPPCA) proposes that if a broadband PCS licensee and a non-small business entity enter into an agreement to partition and/or disaggregate, both parties should present a plan that includes measurable opportunities for small businesses, as that term is defined by the U.S. Small Business Administration.¹⁹⁹ NPPCA proposes that the Commission appoint a spectrum oversight committee to review all such agreements between CMRS licensees and entities wanting to partition and/or disaggregate spectrum. The Committee would ensure compliance with the rules requiring that all agreements include measurable opportunities for small businesses to receive reseller and/or agent agreements to provide products and services to the markets partitioned and/or disaggregated.²⁰⁰ NPPCA proposes that the oversight committee be comprised of Commission employees, small business representatives such as NPPCA, and service providers in the CMRS industry.²⁰¹

70. Discussion. We will adopt the licensing procedures set forth in our *Notice* without modification. We find that such procedures are easy to administer and provide an appropriate method for reviewing partitioning and disaggregation proposals. We decline to adopt the proposal of NPPCA to adopt a mandatory requirement that parties seeking the approval of a partitioning or disaggregation arrangement submit a plan which includes measurable opportunities for small businesses and that all such arrangements be reviewed by a CMRS spectrum oversight committee.²⁰² We find that requiring that such information be filed or that an oversight committee review such transactions would discourage parties from entering into partitioning and disaggregation agreements since there would be no formal rules or policies to determine whether such agreements would be approved. This would stand as a substantial entry barrier to small businesses. We find that, under the application review procedures we adopt herein, all partitioning and disaggregation agreements will be subject to public comment and will be reviewed by the Commission for compliance with our rules. We conclude that market forces should dictate whether licensees enter into the types of reseller and agent agreements cited by NPPCA.

¹⁹⁷ *Id.* at ¶¶ 60-61.

¹⁹⁸ GTE Comments at 9-10.

¹⁹⁹ NPPCA Comments at 3.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

71. We will follow existing partial assignment procedures for broadband PCS licenses in reviewing requests for geographic partitioning, disaggregation, or a combination of both. Such applications will be placed on Public Notice and will be subject to petitions to deny.²⁰³ A licensee will be required to file an FCC Form 490 that is signed by both the licensee and the qualifying entity. With respect to partitioning, the FCC Form 490 must include the attachment defining the partitioned license area, as discussed in paragraph 24 *infra*. In addition, for partitioning, the FCC Form 490 must include an attachment demonstrating the population of the partitioned license area, as discussed in paragraph 24 *infra*. Partial assignment applications that are filed seeking partitioning or disaggregation in the entrepreneur blocks must include an attachment demonstrating compliance with the five year entrepreneur block holding period. The qualifying entity will also be required to file an FCC Form 430 unless a current FCC Form 430 is already on file with the Commission. An FCC Form 600 must be filed by the qualifying entity to receive authorization to operate in the market area being partitioned or to operate the disaggregated spectrum or to modify an existing license of the qualifying entity to include the new/additional market area being partitioned or the spectrum that is disaggregated. Any requests for a partitioned license or disaggregated spectrum must contain the FCC Forms 490, 430, and 600 and be filed as one package under cover of the FCC Form 490.

72. The 45 MHz CMRS spectrum cap contained in Section 20.6 of the rules applies to partitioned license areas and disaggregated spectrum.²⁰⁴ We note that, in the context of partitioning, we will determine compliance with the spectrum cap based on the post-partitioning populations of each licensee's partitioned market. This means that neither the partitioner nor the partitionee may count the population in the other party's portion of the market in determining its own compliance with the spectrum cap. Furthermore, by signing FCC Forms 490 and 600, the parties will certify that grant of the partial assignment application would not cause either party to be in violation of the spectrum aggregation limit contained in Section 20.6 of the rules.

3. License Term

73. Proposal. PCS licenses are issued for initial ten-year terms,²⁰⁵ after which the PCS licensee may seek to renew its license for an additional ten-year term.²⁰⁶ If the licensee demonstrates that it has provided substantial service during its past license term and has substantially complied with the Commission's rules, policies, and the Communications Act, it is granted a renewal expectancy.²⁰⁷ Substantial service is defined as service that is sound, favorable,

²⁰³ See 47 C.F.R. §§ 24.830 & 24.839.

²⁰⁴ 47 C.F.R. § 20.6.

²⁰⁵ 47 C.F.R. § 24.15.

²⁰⁶ 47 C.F.R. § 24.16.

²⁰⁷ *Id.*

and substantially above a level of mediocre service that might just minimally warrant renewal.²⁰⁸ In the *Notice*, we proposed that partitionees be authorized to hold their licenses for the remainder of the partitioner's original ten-year license term and that they be granted a similar renewal expectancy based on the substantial service standard.²⁰⁹ We proposed that parties acquiring disaggregated spectrum would hold their licenses for the remainder of the disaggregator's original license term and would be afforded the same renewal expectancy as other PCS licensees.²¹⁰ We sought comment on whether a licensee acquiring spectrum in a geographic area in which it is already a licensee should be allowed to apply its original license term to the newly-acquired spectrum.²¹¹

74. Comments. Most commenters support the proposal in the *Notice* to establish license terms that will allow a partitionee to hold its license for the remainder of the original licensee's ten-year license term.²¹² AT&T Wireless and NextWave argue, however, that an existing broadband PCS licensee that acquires a partitioned licensed or disaggregated portion of spectrum in a market in which it is already a licensee should be allowed to apply its original license term to the partitioned license or disaggregated spectrum.²¹³ If substantial service requirements have not been met, PCS Wisconsin contends that the partitioned area should revert to the original license holder.²¹⁴

75. Several commenters agree with the proposal to apply the remaining license term of the original license to disaggregated spectrum.²¹⁵ Sprint contends that disaggregated licensees should be granted a new ten-year license term to run from the date of disaggregation.²¹⁶ Commenters agree that disaggregated licensees should be granted the same renewal expectancy as the original licensees.²¹⁷ Sprint also agrees with the proposal in the *Notice* to permit

²⁰⁸ *Id.*

²⁰⁹ *Notice* at ¶¶ 29-30.

²¹⁰ *Id.* at ¶ 57.

²¹¹ *Id.*

²¹² See, e.g., AirGate Comments at 3; AT&T Wireless Comments at 4; CTIA Comments at 9; GTE Comments at 4; PCS Wisconsin Comments at 4.

²¹³ NextWave Comments at 2; AT&T Wireless Comments at 4-5.

²¹⁴ PCS Wisconsin Comments at 4.

²¹⁵ GTE Comments at 9; NextWave Comments at 6; PCS Wisconsin Comments at 6.

²¹⁶ Sprint Comments at 9.

²¹⁷ Sprint Comments at 9; GTE Comments at 9.

disaggregating licensees with existing licenses in the same area to hold the newly disaggregated spectrum for the term of that licensee's original PCS license.²¹⁸

76. Discussion. We will allow partitionees and disaggregatees to hold their licenses for the remainder of the original licensee's ten-year license term. Partitionees and disaggregatees may also earn a renewal expectancy on the same basis as other PCS licensees. We note that this approach is similar to the existing partitioning provisions for rural telcos and to the partitioning provisions we recently adopted for MDS.²¹⁹ This is also consistent with the licensing rules for full and partial transfers or assignments in paging, narrowband PCS, and broadband PCS.²²⁰

77. We conclude that this approach is the easiest to administer and prevents a PCS licensee from obtaining greater license rights than were originally granted under the terms of the original license, while allowing existing PCS licensees flexibility to manage their licenses using market principles. We decline to adopt Sprint's proposal to grant a disaggregatee a new ten-year license term beginning from the date it acquires disaggregated spectrum. To permit parties acquiring disaggregated spectrum to "re-start" the license term from the date of the grant of the partial assignment application could unnecessarily delay service to the affected areas. We believe our action will prevent licensees from using partitioning and disaggregation to circumvent our established license term rules. Businesses contemplating entry into the PCS market would have minimum incentive, under Sprint's approach, to quickly utilize all of their available spectrum if they could wait until the end of their license terms to enter into a partitioning or disaggregation agreement and grant the partitionee or disaggregatee a new ten-year license term. By limiting the license term of the partitionee or disaggregatee, we ensure that there will be maximum incentive for parties to pursue available spectrum as quickly as practicable, thus expediting the delivery of PCS services to the public.

78. We also decline to adopt AT&T Wireless and NextWave's proposals to permit an existing broadband PCS licensee acquiring a partitioned license or disaggregated spectrum in a market in which it is already a licensee to apply its original license term to the partitioned license or spectrum. Such a proposal would be burdensome to administer because the processing staff would be required to determine the licensee's other licenses in the market and calculate the correct expiration date for the partitioned or disaggregated license. We find that such an administrative burden would outweigh the benefit that may result from such a proposal.

4. Technical Rules

79. Proposal. In the *Notice*, we proposed that our current technical rules for service area boundary limits and protections as well as coordination and negotiation between licensees, be

²¹⁸ Sprint Comments at 10.

²¹⁹ 47 C.F.R. § 21.931.

²²⁰ We note, however, that the partitioned license term under our cellular rules runs anew from the date the transfer request is granted.

applied to partitioned license areas.²²¹ We sought comment on what changes, if any, were needed in our interference and other operational rules.²²²

80. Comments. Motorola argues that disaggregation rules should be both technology and application neutral.²²³ To allow optimum usage of the spectrum and the broadest choice of technology, Motorola contends the rules should be flexible to permit deployment of any technology for any intended use.²²⁴

81. Discussion. We find that our existing technical rules are sufficient for application in the partitioning and disaggregation contexts and that no additional technical rules are required at this time. Should technical difficulties arise, however, we shall take whatever action is necessary to alleviate any technical or interference problems that result from partitioning or disaggregation, including appropriate modifications to our technical rules.

5. Microwave Relocation

82. Overview. In the *Notice*, we sought comments on how to implement the microwave cost sharing plan for partitionees and disaggregatees.²²⁵ We noted that, under the plan, later entrant PCS licensees will be required to pay reimbursement costs when they have actually benefitted from the spectrum-clearing efforts of another party, according to a cost-sharing formula that takes into account the amounts paid to relocate a particular microwave link and the number of PCS licensees that would have interfered with the link.²²⁶ We tentatively concluded that a new entrant, such as a partitionee or disaggregatee, should be treated as any other later entrant PCS licensee for purposes of the relocation cost-sharing plan.²²⁷

83. Comments. The American Petroleum Institute (API), a national trade association representing approximately 300 companies in the petroleum and natural gas industry,²²⁸ urges the Commission to safeguard the integrity of the microwave relocation cost-sharing plan recently

²²¹ *Notice* at ¶ 62.

²²² *Id.*

²²³ Motorola Comments at 4.

²²⁴ *Id.*

²²⁵ *Notice* at ¶ 64 (citing Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, FCC 96-196, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8825 (1996) (*Microwave Relocation First Report and Order*)).

²²⁶ *Id.* at ¶ 64 (citing *Microwave Relocation First Report and Order*, at ¶¶ 71-77 and Appendix A).

²²⁷ *Id.*

²²⁸ API Comments at 1.

adopted in WT Docket No. 95-157.²²⁹ API observes that a license transferee, with limited resources, would be more likely to default on the cost-sharing reimbursement obligations, thus denying the relocators and self-relocating incumbents the reimbursement payments to which they are entitled.²³⁰ API also notes that a further impediment to cost-sharing would be that the initial relocators may be required to obtain reimbursement from many more parties than originally anticipated, which could result in delays.²³¹ API recommends that the PCS auction winners that partition and/or disaggregate their licenses retain all their cost-sharing reimbursement responsibilities associated with the entire original license area and spectrum block.²³² The original licensee would be able to seek compensation from the entities to whom they transferred license rights.²³³ API also asks the Commission to clarify that the recipients of partitioned and/or disaggregated licenses are required to protect microwave incumbents from harmful interference in accordance with the Commission's rules.²³⁴ API additionally suggests that the original licensee should have ultimate responsibility for resolving interference problems.²³⁵

84. API supports the proposal in the *Notice* that new entrant licensees may satisfy their cost-sharing obligations with installment payments if the transferee would be eligible for an installment plan equivalent to that enjoyed by the transferring licensee, but only to the extent that, if the transferring licensee was not eligible for installment payments, the transferee also would be ineligible.²³⁶ API also argues that the transferee of an entrepreneurial block license should not be entitled to a more generous installment payment plan than that available to the original licensee.²³⁷

85. UTC also asks the Commission to clarify that partitionees and disaggregatees must comply with the established requirements to coordinate with and protect the operations of incumbent fixed microwave licensees and to comply with the microwave relocation policies set forth by the Commission.²³⁸ UTC suggests that to ensure that partitionees and disaggregatees are aware of their obligations to protect and, if necessary, relocate incumbent fixed microwave

²²⁹ *Id.* at 4.

²³⁰ *Id.* at 6.

²³¹ *Id.* at 7.

²³² *Id.*

²³³ *Id.* at 8.

²³⁴ *Id.* at 7 n.6.

²³⁵ *Id.*

²³⁶ *Id.* at 9-10.

²³⁷ *Id.* at 10.

²³⁸ UTC Comments at 2-3.

systems, the parties to any assignment or transfer application should be required to identify in the application all microwave facilities with which the proposed partitionee/disaggregatee may have to coordinate.²³⁹

86. CTIA and GTE contend that new entrants to PCS should be treated equally with respect to microwave relocation issues.²⁴⁰ Sprint agrees with the Commission's proposal to subject new entrants under partitioning and disaggregation to microwave relocation cost-sharing.²⁴¹ Sprint contends that the new entrants should only pay for those relocations where they would actually cause interference.²⁴² PCIA, in Reply Comments, disagrees with API's proposal that auction winners should retain ultimate responsibility for cost-sharing obligations, and contends that a new entrant who gains its license through partitioning or disaggregation should be treated as any other subsequent PCS licensee for purposes of microwave relocation cost-sharing.²⁴³ PCIA agrees with the proposal in the *Notice* that the later entrants should have the obligation to reimburse the initial licensee if they have benefitted from the spectrum-clearing efforts of another party.²⁴⁴

87. API, in Reply Comments, states that it is not opposed to the participation of PCS license transferees in the cost-sharing plan, provided that the initial PCS licensees are charged with the ultimate responsibility for the cost-sharing obligations.²⁴⁵ API notes that the PCS auction winners have assumed certain obligations and responsibilities with respect to the entire license area and spectrum block.²⁴⁶ API argues that if the PCS licensees do not want to guarantee the relocation costs for the entire service area or spectrum block, they can either not partition and/or disaggregate, or they can demand compensation from the transferee.²⁴⁷

88. Discussion. We conclude that partitionees and disaggregatees should be treated the same as all other PCS licensees with respect to microwave relocation issues.²⁴⁸ In particular, partitionees will have the same rights and obligations as other broadband PCS licensees under the

²³⁹ *Id.* at 2.

²⁴⁰ CTIA Comments at 11; GTE Comments at 10-11.

²⁴¹ Sprint Comments at 12.

²⁴² *Id.* at 13.

²⁴³ PCIA Reply Comments at 8-9.

²⁴⁴ *Id.* at 9.

²⁴⁵ API Reply Comments at 3.

²⁴⁶ *Id.* at 4.

²⁴⁷ *Id.* at 3.

²⁴⁸ CTIA Comments at 11; GTE Comments at 10-11; Sprint Comments at 12.

cost-sharing plan adopted in *Microwave Relocation First Report and Order*.²⁴⁹ Thus, partitionees and disaggregates may seek reimbursement under the plan if they relocate incumbents and they will be required to pay their share of microwave relocation costs if they benefit from the spectrum-clearing efforts of another party, according to the cost-sharing formula adopted by the Commission.²⁵⁰

89. We decline to follow API's suggestion that the original PCS licensee be required to guarantee payments under the cost-sharing plan by the partitionee or disaggregatee. To require licensees to guarantee such payments would be unfair because the original licensees would have no control over the actions of the partitionees and disaggregatees. API has not given any reason that partitionees and disaggregatees should be treated differently than other late-entrant PCS licensees with respect to microwave relocation costs. We find that API's proposal would unnecessarily complicate our existing microwave relocation cost-sharing plan without any public interest benefit.

6. Clearinghouse for Spectrum

90. Proposal. In the *Notice*, we observed that from time to time, the Commission has received requests for limited or discrete amounts of spectrum, sometimes for small geographic areas.²⁵¹ We sought comment on whether we should establish an electronic database accessible to the public with information about licensed PCS spectrum and whether we should encourage the development of private clearinghouses of PCS spectrum information.²⁵²

91. Comments. Commenters support the idea of independent clearinghouses for information on geographic areas open for partitioning and spectrum available through disaggregation.²⁵³ NRTC states that it would be well-positioned to serve as spectrum clearinghouse and would be willing to comply with any Commission requirements.²⁵⁴ ITA, in its Reply Comments, notes that PCIA and ITA have been designated clearinghouses for microwave relocation and suggests that the Commission should create a similar clearinghouse in this proceeding for partitioned area and disaggregated spectrum.²⁵⁵

²⁴⁹ *Microwave Relocation First Report and Order*, at ¶¶ 71-77 and Appendix A.

²⁵⁰ *Id.*

²⁵¹ *Id.* at ¶ 65.

²⁵² *Id.*

²⁵³ AT&T Wireless Comments at 4; ITA Comments at 3-4; NRTC Comments at 6.

²⁵⁴ NRTC Comments at 6.

²⁵⁵ ITA Reply Comments at 4.

92. Discussion. The record demonstrates support for making information on licensed PCS spectrum contained in the Commission's database more readily accessible to the public. While we decline to create a Commission-based resource of information, we will continue to make available, in a user-friendly manner, information contained in our existing databases, concerning geographic areas open to partitioning and spectrum that would be available through disaggregation. We believe that such information will benefit businesses seeking to enter the PCS marketplace, as well as the general public. We also believe that such information will help to speed the delivery of broadband PCS service to underserved and unserved areas, as parties interested in providing service to such areas will be able to use the information in the database to design their systems. Although a few entities have offered to serve as commercial clearinghouses of PCS spectrum information, we decline to establish an official Commission clearinghouse. Nevertheless, we encourage private entities to develop their own databases of information on partitioning and disaggregation.

V. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Introduction

93. In the preceding *Report and Order*, we expand our rules to permit geographic partitioning and disaggregation for broadband PCS licensees. We have previously examined partitioning and disaggregation issues for other services on a per-service basis. As we noted in the *Report and Order*, we presently permit, or are seeking comment on, geographic partitioning and spectrum disaggregation for most wireless services, including Multipoint Distribution Service (MDS), General Wireless Communications Service (GWCS), 800 MHz Specialized Mobile Radio (SMR), paging, 220 MHz, 900 MHz SMR, 38 GHz fixed point-to-point microwave, and the Wireless Communications Service (WCS).²⁵⁶ However, there are other services in which partitioning and disaggregation have either not been proposed or have been adopted on a more limited basis than the PCS rules we adopt today. For example, while partitioning is allowed for cellular licensees,²⁵⁷ there are no rules on disaggregation. Similarly, GWCS licensees are permitted to partition only to rural telcos and currently there is no rule for GWCS disaggregation.²⁵⁸

94. We believe that it is appropriate at this time to consider whether to permit full partitioning and disaggregation in cellular, GWCS and any other services that are licensed on a geographic area basis, or in spectrum blocks of sufficient size to make disaggregation practical. As we indicate in the *Report and Order*, we find partitioning and disaggregation to be an effective means of providing PCS licensees with the flexibility they need to tailor their service

²⁵⁶ See *supra* at ¶ 5.

²⁵⁷ See 47 C.F.R. §22.947(b).

²⁵⁸ See *GWCS Second Report and Order*, 11 FCC Rcd at 665, ¶ 105. Since GWCS licensees may provide fixed or mobile services, GWCS licensees may be CMRS licensees. See *GWCS Second Report and Order*, 11 FCC Rcd at 630, ¶ 12.

offerings to meet market demands.²⁵⁹ In addition, the *Report and Order* concludes that partitioning and disaggregation may be used to overcome entry barriers through the creation of smaller licenses that require less capital, thereby facilitating greater participation by small businesses, rural telcos, and minority- and female-owned businesses.²⁶⁰ Therefore, we seek comment on whether these benefits similarly justify extension of partitioning and disaggregation to other services.

B. Discussion

1. Partitioning and Disaggregation for Cellular and GWCS Services

95. Cellular. We seek comment as to whether to permit cellular disaggregation. Commenters should address whether there are technical or other constraints, unique to the cellular service, that would make disaggregation either impractical or administratively burdensome. Commenters should address whether regulatory or technological changes expected in the near future may provide the opportunity for cellular licensees to disaggregate portions of their licensed spectrum to other parties. For example, the Commission recently concluded that cellular providers should have the flexibility to provide both fixed and mobile services.²⁶¹ We seek comment as to whether such regulatory changes may create a demand for cellular disaggregation and whether, in anticipation of such changes, the Commission should adopt interim disaggregation rules for cellular.

96. GWCS. In the *GWCS Second Report and Order*, we adopted partitioning rules for GWCS licensees but we limited partitioning only to the rural telcos.²⁶² Maximum Service Television, Inc. (MSTV) filed a Petition for Reconsideration of the *GWCS Second Report and Order* requesting, *inter alia*, that the Commission permit GWCS licensees to freely partition their licenses to entities other than rural telcos. We agree with MSTV that allowing more open partitioning of GWCS licensees may add flexibility to the service and allow the spectrum to be used more efficiently, however, there are specific questions that must be resolved before open partitioning of GWCS licenses can be implemented. We shall examine those questions in this proceeding.²⁶³

²⁵⁹ See *supra* at ¶ 2.

²⁶⁰ *Id.*

²⁶¹ See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8965 (1996).

²⁶² See *GWCS Second Report and Order*, 11 FCC Rcd at 665, ¶ 105; see also 47 C.F.R. § 26.209.

²⁶³ The remaining issues raised in the petitions for reconsideration to the *GWCS Second Report and Order* will be addressed separately in that proceeding.

97. In this *Further Notice of Proposed Rulemaking*, we seek comment as to whether open partitioning of GWCS licenses should be permitted similar to the proposal for open partitioning we have adopted herein for broadband PCS licensees. In addition, we seek comment as to whether GWCS licensees should be permitted to disaggregate their spectrum. We also seek comment as to whether there are technical or regulatory constraints unique to the GWCS service that would render disaggregation impractical or administratively burdensome. Further, we recognize that there are special competitive bidding issues, similar to those raised in the broadband PCS context, that must be resolved if we permit open partitioning and disaggregation for GWCS. We shall address those issues separately in paragraphs 110 through 111 *infra*.

2. Available License Area

98. In the *Report and Order*, we find that allowing partitioning of broadband PCS licenses along any service area defined by the parties is the most logical approach.²⁶⁴ We conclude that allowing the parties to define the partitioned PCS service area would enable licensees to design flexible and efficient partitioning agreements which would permit marketplace forces to determine the most suitable service areas. Section 22.947(b) of the rules provides that a cellular licensee may partition portions of its cellular market to other eligible parties.²⁶⁵ The parties are free to define the license area or "CGSA" of the new partitioned cellular system.²⁶⁶ Because the cellular partitioning rule is sufficiently flexible to permit parties to freely define the partitioned license area, we do not propose to modify the cellular rules at this time.

99. GWCS service areas are based on Economic Areas.²⁶⁷ Similar to the former rule for broadband PCS partitioning, GWCS licensees must partition along an established geopolitical boundary, such as county lines, the partitioned area must include the wireline service area of the rural telco and it must be reasonably related to the rural telco's wireline service area.²⁶⁸ In the *Report and Order* we eliminate the restriction that limited partitioning of broadband PCS licenses to rural telcos and we find that requiring PCS partitioning along county lines may be too restrictive and, therefore, may discourage partitioning.²⁶⁹ We seek comment on whether and how our existing partitioning rule for GWCS, which requires partitioning along established geopolitical boundaries and along an area that is reasonably related to a rural telco's wireline service area, should be modified, if we choose to open partitioning of GWCS licenses to entities other than rural telcos. We tentatively conclude that a more flexible approach, similar to the one we

²⁶⁴ See *supra* at ¶ 24.

²⁶⁵ See 47 C.F.R. § 22.947(b).

²⁶⁶ See 47 C.F.R. § 22.947(b)(1).

²⁶⁷ See 47 C.F.R. § 26.102.

²⁶⁸ See 47 C.F.R. 26.209(d)(1).

²⁶⁹ See *supra* at ¶¶ 13-16, 23-24.

adopted for broadband PCS, is appropriate for GWCS. Partitioning of GWCS licenses would be permitted based on any license area defined by the parties. We seek comment on whether this proposal is consistent with our licensing of GWCS based on Economic Areas and whether there are any technical or other issues unique to GWCS that might impede the adoption of a flexible approach to defining the partitioned license area.

3. Amount of Spectrum to Disaggregate

100. We seek comment as to whether minimum disaggregation standards are necessary for cellular and GWCS. We seek to determine whether technological and administrative considerations warrant the adoption of such standards. Cellular licenses are currently issued for a 25 MHz block of spectrum and GWCS licenses for 5 MHz blocks.²⁷⁰ GWCS licensees are also permitted to obtain multiple 5 MHz blocks and are subject to a 15 MHz GWCS spectrum aggregation limit.²⁷¹ We find that any such standards we adopt should be sufficiently flexible so as to encourage disaggregation while providing a standard which is consistent with our technical rules and by which the Commission will be able to track disaggregated spectrum and review disaggregation proposals in an expeditious fashion.

4. Combined Partitioning and Disaggregation

101. We seek comment as to whether combined partitioning and disaggregation should be permitted for cellular and GWCS services. We tentatively conclude that we should permit such combinations to provide parties the flexibility they need to respond to market forces and demands for service relevant to their particular locations and service offerings.

5. Construction Requirements

102. Cellular. The cellular service has a unique procedure for ensuring that a licensee provides service to its entire market. A cellular licensee has the exclusive right, for the first five years following the issuance of the initial authorization for the first cellular system in its market (the "five-year build-out period"), to expand its system within its market.²⁷² After that five year period expires, eligible parties are allowed to file applications (generally referred to as "unserved area" or "Phase II" applications) for any portion of the cellular market that is unserved.²⁷³ This procedure encourages cellular licensees to build-out their entire market or risk losing an unserved area to another party. With respect to partitioning, whenever a partitioning agreement is executed, the parties must define in their agreements whether the partitioner shall retain the "expansion rights" for the partitioned portion of the market or whether the partitionee shall have

²⁷⁰ See 47 C.F.R. §§ 22.905 and 26.103.

²⁷¹ See *GWCS Second Report and Order*, 11 FCC Rcd at 644, 645, ¶¶ 48, 50.

²⁷² *Id.*

²⁷³ See 47 C.F.R. § 22.947(b)(2).

those rights.²⁷⁴ Should the partitionee obtain the expansion rights for all or some of the unserved portion of the market, the partitionee would have the remainder of the original licensee's five-year build-out period to complete expansion to the remaining unserved portion of the market or be subject to unserved area applications.²⁷⁵ The cellular licensee must, therefore, decide whether to retain the rights to build-out the remaining unserved portion of its market or whether to cede those rights to the partitionee who will take responsibility for build-out.

103. While we do not propose to modify our existing cellular build-out procedures, we seek comment as to whether the cellular partitioning rule is sufficiently flexible to increase the viability and value of partitioned cellular licenses and to facilitate cellular partitioning while preventing circumvention of the cellular build-out procedures. We invite comment as to whether the existing cellular rules might be amended to further facilitate cellular partitioning and what types of alternative partitioning mechanisms might be adopted.

104. In addition, we seek comment as to whether we should adopt a disaggregation certification procedure similar to the type adopted for broadband PCS. We propose requiring parties seeking Commission approval of a cellular disaggregation agreement to include a certification as to which party will be responsible for building out the remainder of the market. Should that party fail to build out, we propose that the unserved portion of the market would be subject to Phase II or unserved area applications. We seek comment as to whether such an approach is feasible for cellular disaggregation given the distinctive nature of the cellular build-out rules.

105. GWCS. The GWCS service has construction requirements that are similar to those for broadband PCS. A GWCS licensee must offer service to one-third of the population in the area in which it is licensed within five years of its initial license grant date and offer service to two-thirds of the population in the area in which it is licensed within ten years of its initial license grant date.²⁷⁶ A partitionee is responsible for meeting the construction requirements for its partitioned area.²⁷⁷ In the *Report and Order*, we adopt two construction options for broadband PCS partitioning and a certification procedure for broadband PCS disaggregation.²⁷⁸ These procedures give the parties the flexibility to choose how to apportion the responsibility for meeting our broadband PCS construction requirements.²⁷⁹ In addition, we require that, at the five-year benchmark, broadband PCS partitionees file supporting documentation showing

²⁷⁴ See 47 C.F.R. §22.947(b)(1).

²⁷⁵ See 47 C.F.R. § 22.947(b)(1) - (2).

²⁷⁶ See 47 C.F.R. § 26.104(a).

²⁷⁷ 47 C.F.R. § 26.209(e).

²⁷⁸ See *supra* at ¶¶ 42-43, 61-63.

²⁷⁹ *Id.*

compliance with the construction requirements.²⁸⁰ Since the construction requirements for GWCS are similar to those for broadband PCS, we seek comment as to whether we should amend our existing partitioning rule for GWCS to allow dual construction options for GWCS partitioning and adopt a certification procedure for GWCS disaggregation similar to the procedure we have adopted for broadband PCS.

106. For example, under the first construction option for GWCS partitioning, the partitionee would certify that it will satisfy the same construction requirement as the original GWCS licensee for its partitioned license area. Under the second construction option, the original GWCS licensee may certify that it has or will meet its five-year construction requirement and that it will meet the ten-year construction requirement for the entire license area. Since the original GWCS licensee retains responsibility for meeting the construction requirements, we believe that the partitionee should be permitted to meet a less substantial construction requirement. We seek comment as to what lesser construction requirement would be appropriate. In the broadband PCS rules we adopt in the *Report and Order*, the partitionee must only meet the substantial service requirement for renewal expectancy for the partitioned license area. Since there is a similar substantial service renewal expectancy standard for GWCS licensees, we propose to adopt the same reduced construction requirements for GWCS partitionees.

107. As for GWCS disaggregation, we propose adopting a procedure similar to the one adopted for broadband PCS and proposed for cellular. Under such an approach, the disaggregating parties would be required to submit a certification, signed by both the disaggregator and disaggregatee, as to which of the parties will retain responsibility for meeting the five and ten-year construction requirements for the GWCS market. The parties would be permitted to share responsibility for meeting the construction requirements. The party or parties taking responsibility for meeting the construction requirements would be subject to license forfeiture for failing to meet the construction requirements.

6. License Term

108. Both cellular and GWCS licenses are granted for ten year terms,²⁸¹ after which the licensee may seek to renew its license for an additional ten-year term. Both cellular and GWCS licensees that demonstrate that they have provided substantial service during their past license terms and have substantially complied with the Commission's rules, policies, and the Communications Act, will be granted a renewal expectancy.²⁸² Neither the cellular nor GWCS rules specifically state the license term or the renewal procedure for partitioned licensees. In the

²⁸⁰ See *supra* at ¶ 43.

²⁸¹ See 47 C.F.R. §§ 22.144(a) & 26.13.

²⁸² See 47 C.F.R. §§ 22.940(a)(1)(i) - (ii) & 26.14.